

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-40414
Summary Calendar

WAYNE HAYWOOD WILLIAMS,

Plaintiff-Appellant,

VERSUS

COLLIN COUNTY, ET AL,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Texas

(4:93-CV-295)

(October 25, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

BENAVIDES, Circuit Judge:*

The appellant, Wayne Haywood Williams, appeals the dismissal of his pro se, in forma pauperis (IFP) civil rights complaint against Collin County, Texas, the Sheriff of Collin County, and numerous jail employees alleging excessive force, retaliation and conspiracy claims. We affirm in part and vacate and remand in

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

part.

Appellant has filed three lawsuits in the district court relating to the condition of the jail and/or his treatment at the Collin County jail. The instant case (No. 4:93cv295), is the third case and it was dismissed as frivolous as to the individual defendants because the district court found the claims were repetitive claims raised in the two prior lawsuits which had been terminated with prejudice, and as to Collin County because appellant failed to allege a custom or policy of the county which caused the alleged constitutional violations.

A complaint filed IFP can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Sara Plasma, Inc, 964 F.2d 465, 468 (5th Cir. 1992). This Court reviews the district court's dismissal for an abuse of discretion. Id.

Duplicative Litigation

The district court may dismiss a duplicative lawsuit as malicious under § 1915(d). Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir. 1993). The district court determined that Williams's claims were duplicative of the claims dismissed in cause numbers 4:93cv8 and 4:92cv180.

Cause no. 4:93cv8 involved allegations regarding civil rights violations at the Collin County jail. Williams concedes that the claims raised in this lawsuit were raised in cause no. 4:93cv8. In the prior action the district court determined that to the extent

Williams was suing Sheriff Box in his individual capacity, he was relying on a respondeat superior theory, which is inapplicable in a § 1983 action, and to the extent that he was suing Box in his official capacity, Williams had failed to demonstrate that the alleged violations were the result of a county policy or custom. The district court dismissed as frivolous with prejudice the claims against Box, but specifically reserved Williams's right to bring the claims against the proper defendants.

Cause no. 4:92cv180 also involved claims of civil rights violations at the Collin County jail. In that action Williams raised allegations of denial of access to the law library, inadequate food service, overcrowding, and improper intercounty transfers. The district court granted the defendants' motion to dismiss or for summary judgment and dismissed the complaint as frivolous.

The district court properly dismissed the claims against Box as duplicative of the claims raised in cause no. 4:93cv8. However, the district court abused its discretion by dismissing the claims against the remaining individual defendants because in cause no. 4:92cv180, the district court specifically reserved Williams's right to bring these claims against the proper defendants in another lawsuit, and such claims were not raised in cause no. 4:92cv180. The judgment as to Sheriff Box and Collin County is affirmed,¹ and the judgment as to the remaining defendants is

¹Williams does not challenge the district court's dismissal of Collin County. Issues not raised or briefed are considered abandoned. Evans v. City of Marlin, Tex., 986 F.2d 104, 106 n.1

vacated and the case remanded to the district court for further proceedings.

(5th Cir. 1993).